



August 20, 2001

Ms. Sue M. Lee  
Henslee, Fowler, Hepworth & Schwartz  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2001-3655

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150863.

The Weatherford Independent School District (the "district"), which you represent, received a request for "a list of the finalists being interviewed for the superintendent position on Friday, April 20, 2001." You claim that the district was not required to seek a ruling from this office on the matter, nor release any such list to the requestor, because the list of six applicants for the superintendent position was not responsive to the request for "the finalists" for the position. You also cite to section 552.126 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered the comments of the requestor. *See* Gov't Code § 552.304.

First, we address your argument that the district was not obligated to respond to the request. Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the district holds information from which the requested information can be obtained, the

district must provide that information to the requestor unless it is otherwise excepted from disclosure. In this case, we believe a good faith reading of the request compels the conclusion that the information provided to this office by the district is responsive to the request. Therefore, in order to withhold this information from the requestor, the district was required to seek a ruling from this office. *See* Gov't Code §§ 552.301, .302.

Section 552.301(b) of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The district received the written request for information in April, 2001 and did not seek a ruling from this office until June 15, 2001. Therefore, we conclude that the district failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. We consider an assertion of section 552.126 of the Government Code to constitute a compelling reason to overcome the presumption of openness. *Cf.* Open Records Decision No. 540 (1990) (rationale underlying predecessor to section 552.123 of Government Code, which protects name of an applicant for position of chief executive officer of institution of higher education, is to protect governmental body's ability to obtain greatest number of applications of qualified persons for high-level academic posts, and to facilitate this goal by protecting from premature public disclosure and scrutiny those individuals who desire to be considered for such position, but who are deterred from submitting themselves to selection process because of fear of harm to their professional reputations if not selected or to their current positions through public disclosure of fact that they are seeking another position).

Section 552.126 excepts from disclosure the "name of an applicant for the position of superintendent of a public school district . . . except that the board of trustees must give public notice of the *name* or names of the finalists being considered for the position at least 21 days" before a vote or final action is taken. (Emphasis added). Although the requestor contends that the district had six finalists for superintendent, you state that

[i]t has been the district's position that the names of the six interviewees were not a list of "finalists." The finalist was Dr. Cron. It is a local school board decision as to whether the six applicants were finalists. The district determined in good faith that the finalist was Dr. Cron, not the six applicants.

We therefore conclude that under section 552.126, the district was required to give public notice of the name of the individual it determined to be the finalist for the position of school district superintendent at least 21 days before a vote or final action was taken on the employment of that person. However, the names of the remaining six applicants for the position of superintendent are excepted from disclosure under section 552.126, and must be withheld from the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

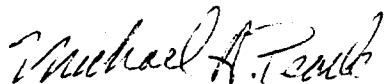
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 150863

Enc. Submitted documents

c: Mr. Charles K. Wilson  
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